



# **The Commonwealth of Massachusetts Witness Protection Program**

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An Overview of Cases During Fiscal Year 2008

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**May 2009**

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## *Introduction*

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On March 30, 2006, “An Act Reducing Gang Violence” was signed into Massachusetts law.<sup>1</sup> While it contained several provisions designed to reduce the violence and fear generated by gang members – such as enhancing the penalty for unlawful possession of a firearm, making it easier to prove the crime of perjury, and creating new criminal penalties for disseminating secret grand jury material and intimidating witnesses – the law’s principal goal was to create the Commonwealth’s first statewide witness protection program.

The Act established a five-member “Witness Protection Board” (the “Board”) which includes the Attorney General, the State Auditor, a representative from the Massachusetts District Attorneys’ Association, a representative from the Massachusetts Chiefs of Police Association, and the Secretary of Public Safety and Security, or their respective designees. The statute allows the Attorney General and District Attorneys (or designated prosecutors) to apply for funds to protect a “critical witness,” defined as a person who is essential to the investigation or prosecution of a criminal matter but whose participation places him or her in danger. This money can also be used to protect “endangered persons”, who are individuals placed in danger due to an association with the critical witness. The statute requires prosecutors to file a petition for witness protection services with the Board. The petition describes the nature of the criminal investigation or prosecution, the reason the witness is in danger, the proposed plan for protection services, and a proposed budget to cover the cost to provide those services. The statute allows prosecutors to be reimbursed for providing protection services to witnesses, such as relocation, transportation, housing, living expenses, and necessary protection by law enforcement. It also allows prosecutors to take immediate steps to protect a witness facing an imminent threat.

The statute places significant requirements on the witness as well. Before receiving witness protection funds, a written promise, called a “Memorandum of Understanding,” must be signed by the witness and the prosecuting officer. The Memorandum of Understanding requires critical witnesses to provide complete and truthful information to police and prosecutors, testify truthfully in all necessary court proceedings, abide by state and federal law, cooperate with all reasonable requests to keep them safe, make a sworn statement of all legal and court obligations

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<sup>1</sup> See St.2006, c. 48, “An Act Reducing Gang Violence.” This report to the General Court is filed in part to comply with the requirements of the Act. See § 11 (requiring an annual report to be filed with the General Court, the House and Senate Committees on Ways and Means, and the Joint Committee on the Judiciary).

pending against them, and keep police and prosecutors updated on their whereabouts and activities. If a critical witness fails to abide by any of the conditions set forth in the Memorandum of Understanding, the prosecutor may revoke and terminate all protection services.

The role of the Board is to review and critically evaluate the petitions filed by prosecutors, to approve – in whole or in part – the petition and budget proposal submitted, and to provide the needed funds to protect the witness. The Board meets regularly to consider petitions, and often hears presentations (either in-person or by telephone) from prosecutors who provide necessary context to the petition itself or answer questions about the protection plan from Board members. If the Board votes to approve the petition, the EOPSS fiscal staff uses an inter-departmental service agreement (ISA) to transfer the approved funds directly to the requesting prosecutor's office. At no time does the fiscal staff have access to any identifying information. The applicant's office is then required to provide updates on expenditures to EOPSS fiscal staff so that the Board can be certain that the funds requested were spent in the manner authorized. In sum, the witness protection law creates a reimbursement program in which prosecutors work with police to identify those critical witnesses in need of protection, devise the type of protection that the critical witness (and other persons in need of services) is in need of, and provide a cost estimate of the protection services. In this way, prosecutors with direct access to the critical witness are given the ability to devise the best plan for protection services for that witness.

The witness protection law required the Board to promulgate regulations to administer the program. These regulations – set forth at 501 CMR 10.00 and attached to this report - have been in effect since May 1, 2006 (see Appendix). The Board also created a number of forms for prosecutors to use in applying for witness protection funds. These forms help simplify the process for prosecutors to apply for witness protection funds, help the Board compare requests across different counties, and help prosecutors comply with pre-trial discovery requests in criminal cases.

In Fiscal Year 2008 (July 1, 2007 through June 30, 2008) the Board received 77 petitions, up from 45 petitions in the previous fiscal year. The Board observed this significant increase in petitions as a result of heightened interest in the program as well as the commencement of training programs conducted by the Board at district attorneys' offices throughout the Commonwealth.

This report presents information on witness protection services in Massachusetts during Fiscal Year 2008 with some comparisons to previous years of the program. Data in this report are taken from the witness protection petitions filed by the Attorney General and District Attorneys' offices.<sup>2</sup> The analyses in this report are presented in the following sections: Witness Protection Case Characteristics, Witness Characteristics, Incident Characteristics, and Costs.

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<sup>2</sup> The data analyzed in this report are taken only from written documentation of the cases (case petition, meeting minutes, receipts, etc.). It should be noted that during the development of the witness protection petition multiple drafts of the form were used to collect data. Earlier versions of the form did not include all of the variables now required. Therefore, information discussed and approved orally among the Board during the decision making process was not documented in some of the earlier case files, resulting in some data being unavailable for the purposes of this analysis. Missing data items will be discussed further in the footnotes of each section.

## Case Characteristics

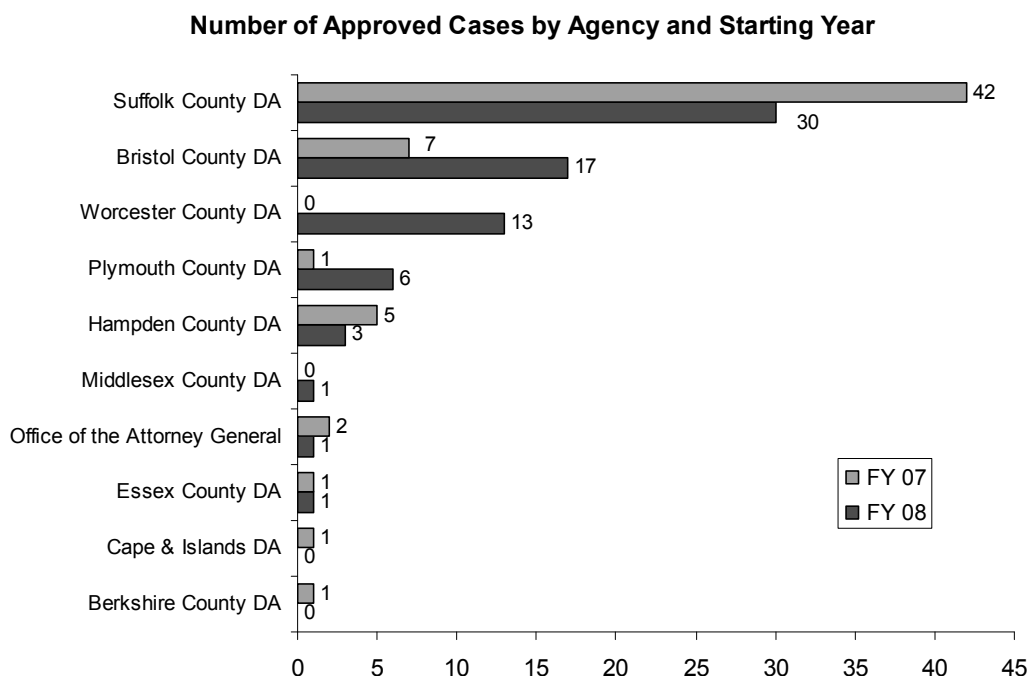
### Petition Overview

From the start of the Witness Protection Program in May 2006 through the end of Fiscal Year 2008 (June 30, 2008), the Witness Protection Board approved 132 separate petitions for witness protection services. Twenty-five of these 132 witness protection cases (or 19%) received additional money for follow-up services after the original petition.

In FY08, 77 cases received funding (this includes 72 cases that began in FY08 and 5 cases that began in other years but received additional funding in FY08).

Figure 1 shows the breakdown of funding by agency and starting year.<sup>3,4</sup> Suffolk County had a decline in cases from 42 in FY07 to 30 in FY08, while Bristol County and Worcester County had large increases in cases (7 in FY07 to 17 in FY08, and 0 in FY07 to 13 in FY08 respectively).

**Figure 1.**

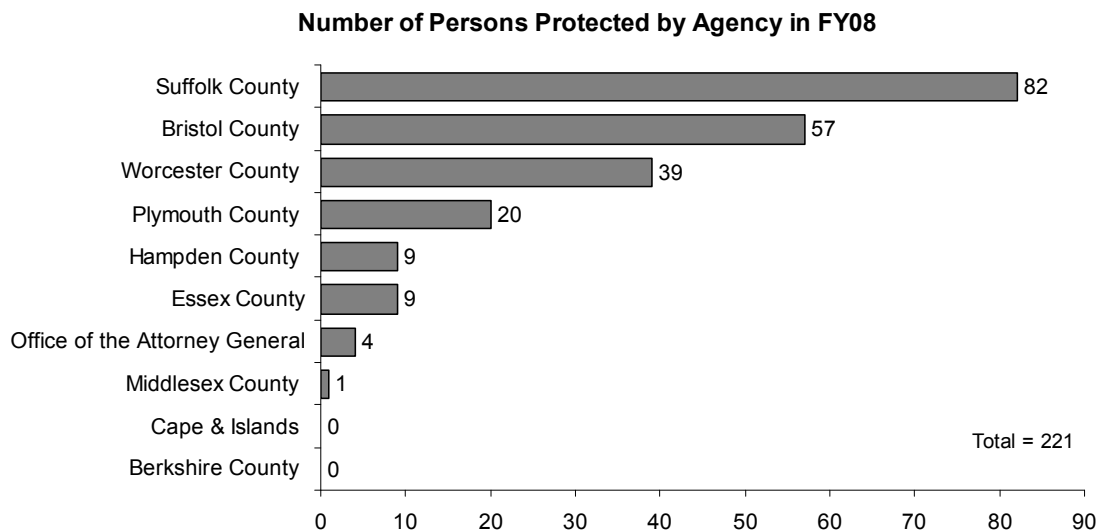


<sup>3</sup> FY 07 also includes the cases that were approved in May and June of 2006.

<sup>4</sup> Figure 1 shows the number of cases by starting year. As such, FY08 only includes the 72 cases that began in that year and not the 5 cases that began in other starting years.

Witness protection funds can be used to protect the critical witness on a petition as well as persons associated with the critical witness who may be in danger (“endangered persons”). A total of 221 persons were protected using witness protection funds in FY08. As shown in Figure 2, Suffolk County protected the largest number of persons (82), followed by Bristol (57), and Worcester County (39). The average number of persons protected per case was 2.9.

**Figure 2.**



The average case in FY08 lasted 104 days from the date the petition was approved to the date that the protection services were no longer expended.<sup>5</sup> The longest case lasted 490 days, while the shortest case lasted just one day. For 5 of the 77 cases funded in FY08, the Board extended witness protection services for a previously-approved case.

<sup>5</sup> Some cases remained open at the end of fiscal year 2008. Only closed cases were reviewed and included in the case-length analysis.

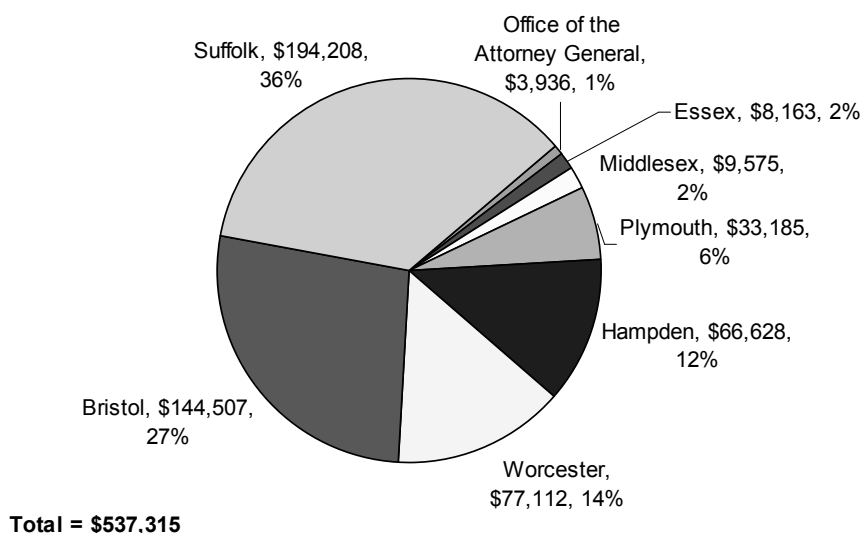


### ***Funding Overview***

In total, from May 1, 2006 through June 30, 2008 the Witness Protection Board authorized \$1,027,219 for witness protection services for the 132 cases<sup>6</sup>. In FY08 alone, the Board approved \$537,315 for the 77 cases funded during this time.<sup>7</sup> Approximately 86% of cases were approved for the full amount requested in FY08, 13% were approved for partial funding, and 1% of cases were denied funding (only 1 case was denied). Of the total amount authorized, approximately 36% was awarded to Suffolk County (\$194,208), followed by Bristol County (27% or \$144,507). The average amount authorized per case was \$5,327. Funding amounts ranged from \$250 to \$26,100 per case.

**Figure 3.**

**Amount of Approved Funding by Agency for FY08**



<sup>6</sup> The Board was funded with \$500,000 for the final two months of FY 06 (May and June), \$1,000,000 for FY 07, and \$750,000 for FY08 (which included \$250,000 carried over from the previous fiscal year). Witness protection program funding was available for witnesses as needed and consequently not all of the money was spent and a portion was reverted back.

<sup>7</sup> For this analysis FY08 funding includes 72 new cases and 5 cases that received funding in FY07 and FY08.

Although Suffolk County received the largest amount of funding in FY08 (see Figure 3), Hampden County had the highest average funding amount per case at \$16,657 (see Table 1). Middlesex County had the next highest average funding amount per case (\$9,575) followed by Essex County (\$8,163). Table 1 also shows the average case length by agency and total number of cases funded by agency in FY08.

**Table 1.**

<b>Average funding amount and case length by agency in FY08</b>			
	<b>Avg Funding Amount</b>	<b>Avg Case Length in Days</b>	<b>Number of Cases</b>
Hampden County	\$ 16,657	127	4
Middlesex County	\$ 9,575	329	1
Essex County	\$ 8,163	137	1
Bristol County	\$ 7,225	129	20
Worcester County	\$ 6,426	70	12
Suffolk County	\$ 6,265	95	31
Plymouth County	\$ 4,741	85	7
Office of the Attorney General	\$ 3,936	54	1

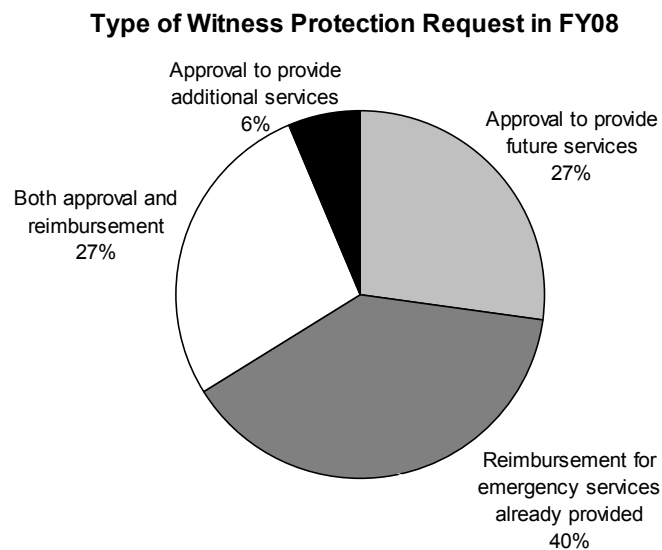
### ***Type of Request***

There are four different types of requests for witness protection funding. An agency can be:

- Approved to provide witness protection services in the future
- Reimbursed for emergency services already provided
- Reimbursed both for emergency services already provided *and* be approved to provide services in the future
- Approved to provide additional services for a previously approved witness.

As shown in Figure 4, more than a third of the requests approved by the Board in FY08 were petitions for reimbursement for emergency services already provided (40%). Approval for future services *and* reimbursement for emergency services already provided (27%) and approval for future services alone (27%) were equally common, followed by additional funding for a previously approved witness (6%).

**Figure 4.**



### ***Memorandum of Understanding***

For every case the critical witness is required to sign a Memorandum of Understanding (MOU) with the prosecuting attorney. In FY08, there were 6 cases (8%) with multiple MOUs signed. These additional MOUs were typically signed by family members and significant others.

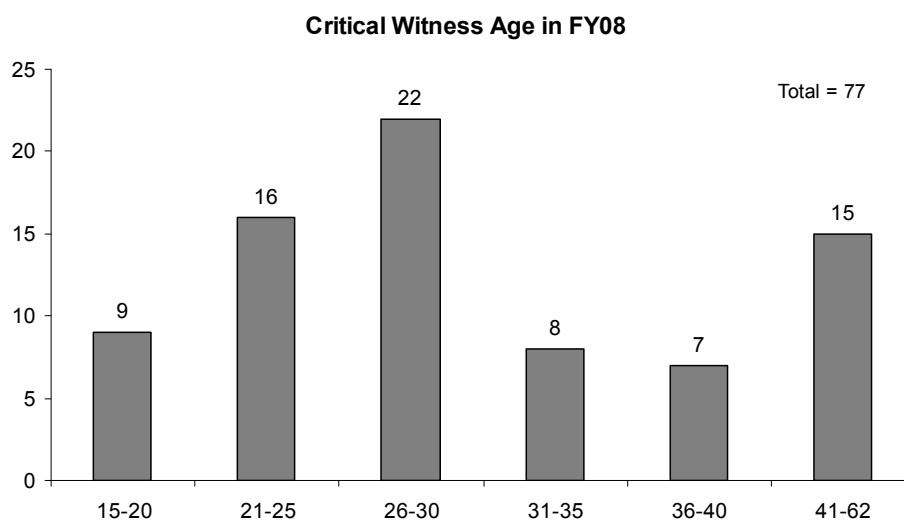
## ***Witness Characteristics***

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### ***Critical Witness Age and Gender***

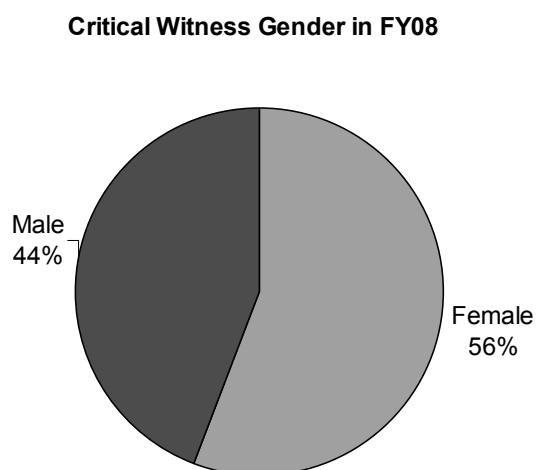
In FY08, the average age of the critical witness was 30, and the median age was 28. The youngest critical witness was 15 years old, and the oldest was 62 years old.

**Figure 5.**



Females were critical witnesses slightly more often than males in FY08 (56% female vs 44% male).

**Figure 6.**

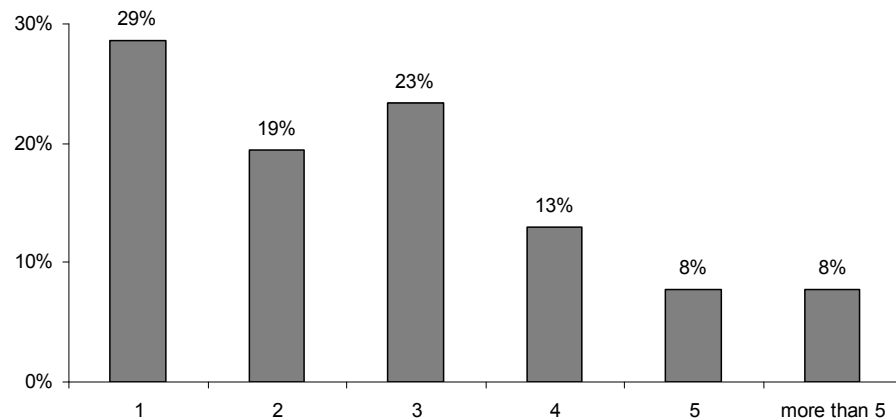


### ***Endangered Persons Relationship and Age***

The number of persons protected per case ranged from one person (only the critical witness) to 10 people. In 29% of the FY08 cases the critical witness was the only individual protected.

**Figure 7.**

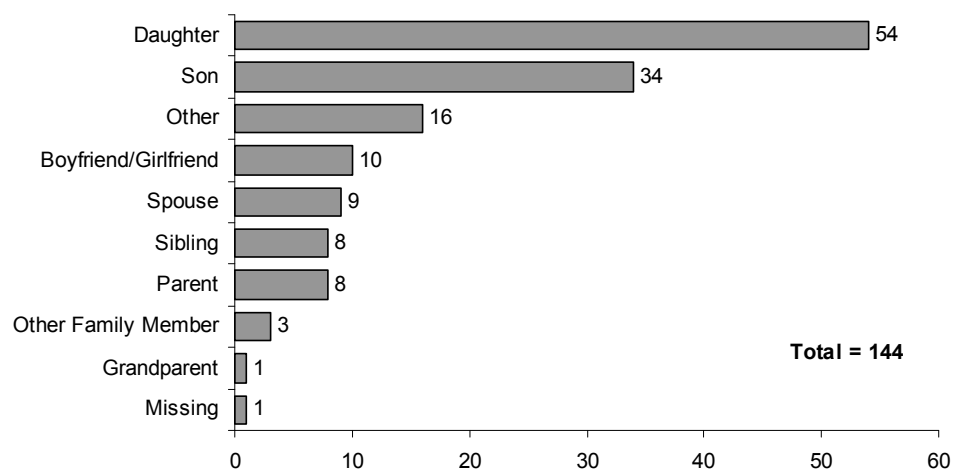
**Percentage of Cases by Number of Persons Protected in FY08**



The endangered persons protected under the petitions were generally family members of the witness. Approximately 53% of the endangered persons were children of the witness. As shown in Figure 8, the most common relationship types were daughter (54), son (34), and other (16).<sup>8</sup>

**Figure 8.**

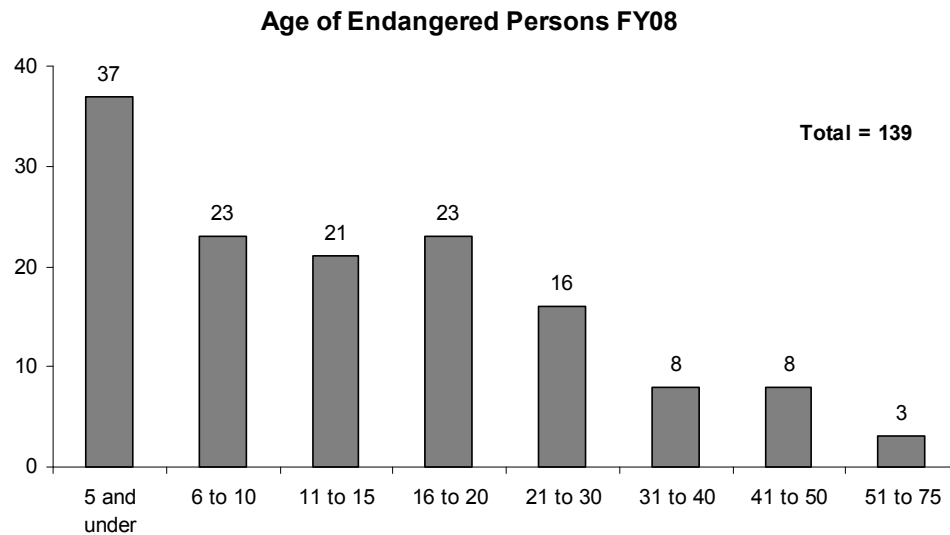
**Number of Endangered Persons by Relationship to the Critical Witness FY08**



<sup>8</sup> The “other” category consisted mainly of girlfriend’s/boyfriend’s children and stepchildren.

The endangered persons protected in FY08 tended to be younger than the critical witnesses.<sup>9</sup> This is not surprising given that 53% of the endangered persons were children of the critical witness (See Figure 8). Approximately 27% of endangered persons were age 5 and under, and 75% were under age 21. The average age of endangered persons was 16 years, and the median age was 13.

**Figure 9.**



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<sup>9</sup> Age information was missing for 5 of the endangered persons.

## ***Incident Characteristics***

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### ***Incident Type and Nature***

The witness protection petition collects information about the underlying investigation or prosecution for each case. Incident characteristics and offense nature are described below. It is important to note that the categories in Tables 3, 4, and 5 are not mutually exclusive as some cases involved multiple incident types, nature, and/or weapons.

Table 3 shows which incidents were most frequently cited. In FY08, cases involving murder were the most common (48% of cases) followed by cases involving attempted murder (31%).

**Table 3.**

<b>Percent of Cases by Incident Type in FY08</b>	
Murder	48%
Attempted Murder	31%
Assault and Battery	23%
Other Incident <sup>10</sup>	13%
Robbery	13%
Kidnapping	8%
Home Invasion/Breaking and Entering	6%
Rape/Attempted Rape	6%
Conspiracy	1%

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<sup>10</sup> “Other incidents” involved crimes like firearms violations, extortion and threats, and drug related crimes.

The nature of the incident was also recorded.<sup>11</sup> As shown in Table 4, gang-related incidents were the most common in both FY07 and FY08 (55% and 56% of cases respectively). There was a slight increase in the percentage of personal dispute and domestic violence cases from FY07 to FY08.

**Table 4.**

<b>Percent of Cases by Nature of the Incident and Starting Year</b>		
	<b>FY07</b>	<b>FY08</b>
Gang-Related	55%	56%
Personal Dispute	10%	13%
Domestic Violence	10%	15%
Narcotics Trafficking	8%	6%
Random Violence	4%	1%
Organized Crime	2%	0%

The petitions also collect information regarding weapons used during the incident. The most commonly reported weapon used in FY08 cases was a firearm (77% of cases) followed by a knife/cutting instrument (18%).

**Table 5.**

<b>Percent of Cases by Weapon Used in FY08</b>	
Firearm	77%
Knife/Cutting Instrument	18%
Personal Weapon <sup>12</sup>	17%
Other Weapon <sup>13</sup>	4%
Blunt Object	3%

<sup>11</sup> Incident nature was missing for 17 cases. Only most common case nature is included in Table 4.

<sup>12</sup> “Personal weapons” include hands, feet, teeth, etc.

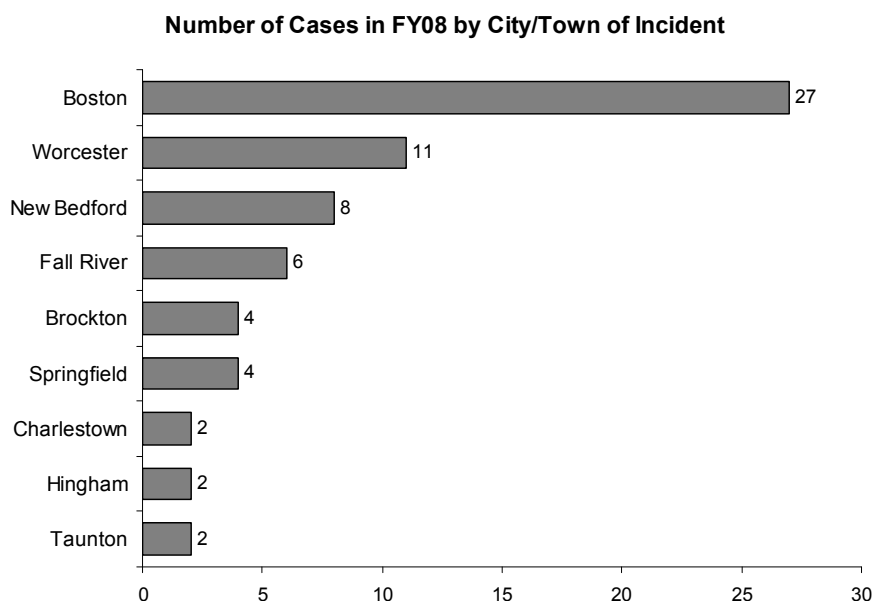
<sup>13</sup> “Other weapons” includes objects such as a telephone or door.



### ***City/Town of Incident***

The petition collects information on the city/town in which the incident occurred. Figure 12 shows the most commonly cited city/town in FY08.<sup>14</sup> Twenty-seven incidents occurred in Boston (35%), followed by 11 in Worcester (14%), and 8 in New Bedford (10%).

**Figure 12.**



### ***Perpetrator/Witness Relationship***

The petition also asks about the perpetrator/witness relationship. For the cases reporting this information in FY08, 95% of witnesses stated that they knew the perpetrator.<sup>15</sup>

<sup>14</sup> The chart only includes the most common cities/towns. It does not include 11 cities/towns that had one case each.

<sup>15</sup> Relationship information was missing for 2 cases.

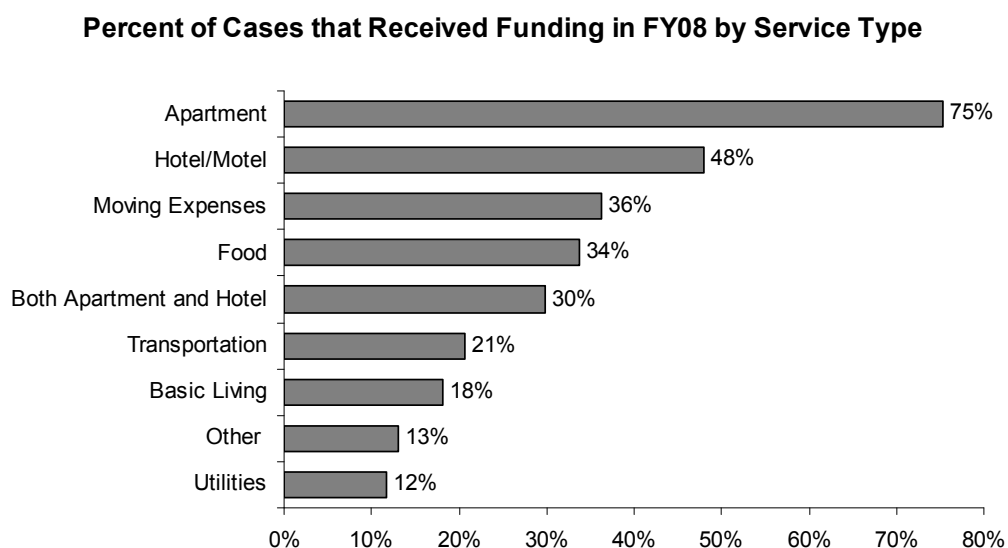
## Costs

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Petitions collect specific information on the costs of the proposed plan for services or emergency services already expended. Figure 13 shows the most commonly funded services.<sup>16</sup>

Approximately 75% of cases received funding for apartment related costs, and approximately 48% for hotel/motel costs. Other commonly funded services were moving expenses (36% of cases) and food (34% of cases). The “other” category includes services such as child care, lost wages, and storage.

**Figure 13.**

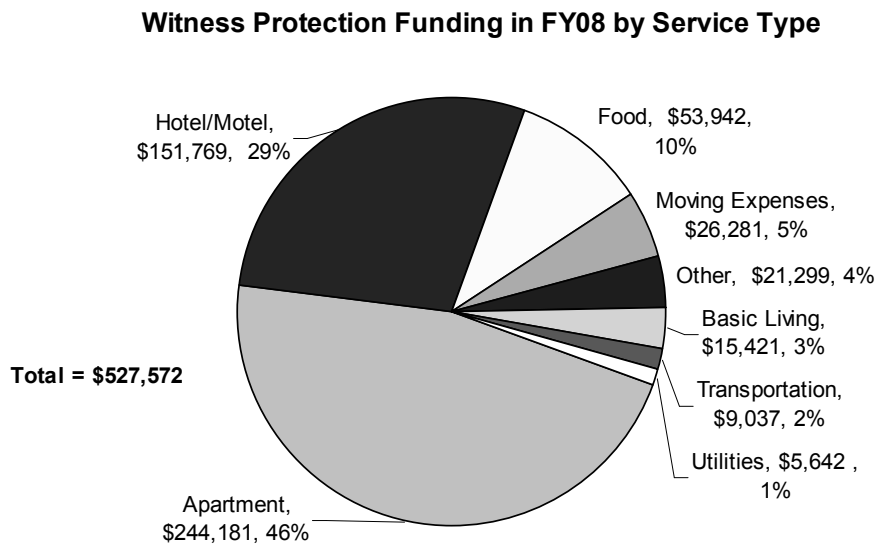


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<sup>16</sup> Service type information was missing for 1 case.

Figure 14 shows the total witness protection funding spent on each service type.<sup>17</sup> Nearly half of the FY08 money was used to pay for apartment related costs (46% or \$244,181) while approximately a third of the funds were spent on hotel/motel (29% or \$151,769). Although it was common for cases to receive money for moving expenses and food (36% and 34% respectively) (see Figure 13) only 5% of total dollars were spent on moving expenses (\$26,281) and 10% on food (or \$53,942).

**Figure 14.**

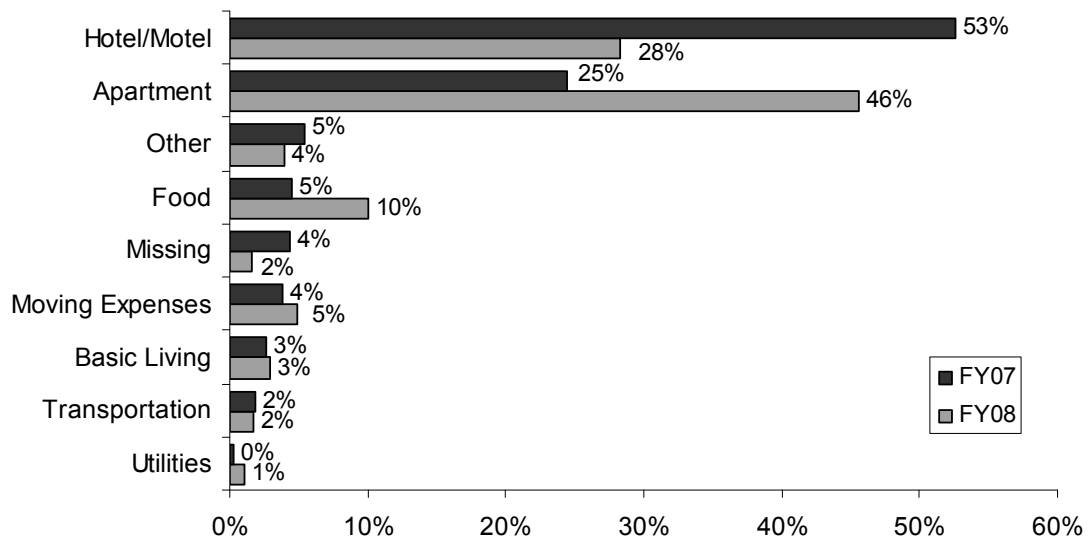


<sup>17</sup> Due to insufficient data a detailed cost breakdown of services funded was unavailable for approximately \$10,000 of the approved dollars which are not included in Figure 14.

Figure 15 compares the witness protection funding spent by service type in FY07 and FY08.<sup>18</sup> A greater percentage of funds were spent on hotel/motel costs in FY07 compared to FY08 (53% compared to 28%). However, only 25% of FY07 funds were spent on apartment related costs compared to 46% in FY08.

**Figure 15.**

**Comparison of FY 07 and FY 08 Funding by Percentage Spent per Category**



<sup>18</sup> As previously stated, the 5 cases that received money for additional services in FY 08 were included in the FY 08 category for this analysis.

## Appendix

### 501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY

#### **501 CMR 10.00:                      Witness Protection Program**

10.01	Purpose
10.02	Statutory Authorization
10.03	Definitions
10.04	Scope
10.05	Eligibility
10.06	Petition For Witness Protection Services
10.07	Petition Authority
10.08	Review of Petition by Witness Protection Board
10.09	Emergency Authorization
10.10	Additional Responsibilities of the Board
10.11	Responsibilities of the Critical Witness
10.12	Responsibilities of Prosecuting Officer
10.13	Disclosure of Witness Protection Information in a Criminal Case
10.14	All Other Disclosures Related to Witness Protection
10.15	Liaisons
10.16	Waiver
10.17	Immunity
10.18	Severability

#### **10.01:                      Purpose**

The purpose of these regulations is to provide guidance to critical witnesses, prosecuting officers, the judiciary, law enforcement, and the public concerning the Witness Protection Program. These regulations set forth the procedures by which a prosecuting officer may petition the Witness Protection Board for assistance in protecting a witness from potential dangers related to the witness's participation in a criminal investigation or prosecution.

#### **10.02:                      Statutory Authorization**

501 CMR 10.00 et. seq. is promulgated pursuant to St. 2006, c. 48, "An Act Reducing Gang Violence."

#### **10.03:                      Definitions**

For the purposes of these regulations, the following words shall have the following meanings: --

"Board." The Witness Protection Board, comprised of the Secretary of Public Safety, the Attorney General, the Auditor, a chief of police appointed by the Massachusetts Chiefs of Police Association, and a district attorney appointed by the Massachusetts District Attorneys' Association, or any member's respective designee.

“Critical witness.” Any person who:

- (i) is participating in a criminal investigation; or
- (ii) has received a subpoena in the context of a criminal investigation; or
- (iii) is reasonably expected to give testimony

and, in the judgment of the prosecuting officer, is essential to a criminal investigation or proceeding. For purpose of these regulations, the term “person” shall mean the critical witness, or that witness’s relatives, guardians, friends, or associates who are endangered by the witness’s participation in the criminal investigation or proceeding. For purpose of these regulations, the term “essential” shall mean the prosecuting officer has a reasonable basis for believing that the witness will provide material, relevant information or testimony.

“Prosecuting officer.” The Attorney General or a District Attorney for any district.

10.04:

#### **Scope**

These regulations shall apply to the Executive Office of Public Safety, members of the Witness Protection Board, all prosecuting officers who seek witness protection services for a critical witness, all critical witnesses accepting protection services, any law enforcement official assigned to provide witness protection services, any person receiving information regarding witness protection services, a superintendent of any school district directed to accept the transfer of a critical witness, an administrator of any housing authority directed to accept the transfer of a critical witness, and any other person called upon by the Board to assist in maintaining the safety and security of a critical witness.

10.05:

#### **Eligibility**

Any person who, in the judgment of the Board, meets the definition of a critical witness shall be deemed eligible to receive witness protection services.

0.06:

#### **Petition for Witness Protection Services**

Requests by prosecuting officers to the Board for witness protection services shall be submitted on witness protection petition forms developed and issued by the Board. Any witness protection petition shall contain, at a minimum, the following information:

- (a) a description of the criminal investigation or prosecution;
- (b) an explanation of how the prospective protectee meets the definition of a “critical witness”;
- (c) an assessment by the prosecuting officer of the potential risk of harm to the critical witness;
- (d) a proposed plan for protection services, including projected costs, method of protection, and expected duration of services; and

(e) a signed memorandum of understanding between the prosecuting officer and the critical witness. The written memorandum of understanding shall be signed by the prosecuting officer or his designee, the witness to be afforded protection services, and the witness's attorney if he or she is represented by counsel. If the witness is a minor, the witness's guardian shall sign the memorandum for the witness.

10.07:

**Petition Authority**

A prosecuting officer may delegate the authority to petition for witness protection services to his or her designee, provided that the prosecuting officer submits a letter to the Board naming the designee before the designee submits a petition.

10.08:

**Review of Petition by Witness Protection Board**

(a) A petition for witness protection services submitted by a prosecuting officer shall be distributed to the Board at the earliest opportunity, and in any event not more than forty eight (48) hours after receipt of the petition. The Board shall meet as often as necessary to review, deliberate, and act on petitions submitted by prosecuting officers.

(b) The Board may approve, in whole or in part, any submitted witness protection petition. The Board may also deny a witness protection petition, or may require a prosecuting officer to resubmit the petition with additional information. Before acting on a petition, the Board may consult with a prosecuting officer, in person or otherwise, and request any additional information it deems necessary. Three or more members of the Board must vote to approve a petition for witness protection services. The Board's decision will be immediately communicated to the prosecuting officer by the Chair of the Board or his or her designee.

(c) Subject to the requirements of Section 10.10 (b), 10.10 (c), and 10.12 (b), an approved witness protection request shall authorize a prosecuting officer to receive reimbursement up to a dollar amount specified by the Board, and for a period of time determined by the Board.

(d) The prosecuting officer shall notify the Board in writing each time a critical witness commits a breach of the memorandum of understanding. Such notice shall be submitted to the Board within three (3) business days of the prosecuting officer's first learning of the breach. If a breach occurs of a term of the memorandum of understanding, the prosecuting officer may revoke and terminate all protective services, and shall so advise the witness in writing. The prosecuting officer must notify the Board in writing within three (3) business days of his or her decision to terminate a critical witness for committing a breach. If a breach occurs, the Board may terminate or limit reimbursement for witness protection services, require a witness to sign a new memorandum of understanding containing additional terms or restrictions, or take any other action it deems necessary, as a condition of continued reimbursement.

(e) In any case where a prosecuting officer requires additional funds for witness protection services, or must extend the length of time that witness protection services are provided to a critical witness, the

prosecuting officer must submit a new petition for witness protection services to the Board. The supplemental petition shall include:

- (i) the previously-filed petition;
- (ii) a description of services provided to date,
- (iii) a description of funds spent to date, including financial records;
- (iv) certification that the witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board;
- (v) the reason why additional witness protection services are needed or have been more expensive to provide than was originally estimated; and
- (vi) an updated plan for protection services, including projected costs, method of protection, and expected duration of services.

(f) The Board shall meet periodically, and in no event less than four (4) times per calendar year, in order to conduct business essential to the effective maintenance and administration of the program. These quarterly meetings shall be held in the Office of the Secretary of Public Safety or other location as designated by the Chair, and shall require the attendance of Board members or their designees.

(g) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by G.L. Chapter 263A, Section 8, the Board shall have the authority to relocate a critical witness to any public school, within or without the witness's current school system, without requiring that the witness change his or her place of residence, and without regard to any waiting list or other impediment to the relocation.

(h) Notwithstanding any general or special law or regulation to the contrary, and pursuant to the authority vested in the Board by G.L. Chapter 263A, Section 9, the Board shall have the authority to relocate a critical witness who resides within the public housing system to another residence within the public housing system, without regard to any waiting list or other impediment to the relocation.

(i) Section 11A and Section 11A ½ of Chapter 30 A of the General Laws shall not apply to any meeting, discussion, or deliberation of the Board.

10.09:

#### **Emergency authorization**

If a prosecuting officer determines that there is an imminent threat to the safety of a critical witness, the prosecuting officer may take any reasonable, appropriate temporary action he or she deems necessary to protect the safety of the witness without prior approval of the Board. In order to obtain reimbursement for expenses incurred in providing emergency protection services, the prosecuting officer must notify the Board of the action taken and the related costs as soon as it is reasonably practical to do so, and in no event longer than forty eight (48) hours after the prosecuting officer begins expending funds for emergency witness



protection services. Within fourteen days of expending funds for emergency witness protection services, or within a period of time set by the Board, the prosecuting officer shall file with the Board a petition for witness protection services which includes all of the information detailed in Section 10.06 of these regulations, as well as an explanation of the exigent circumstances which required the prosecuting officer to act to secure the safety of the witness, the emergency witness protection services provided to date, and the amount of funds expended to provide emergency witness protection. Any costs incurred by a prosecuting officer on an emergency basis which the Board determines, by a vote of three (3) or more members, are otherwise in compliance with these regulations and which are communicated to the Board in compliance with the terms of this section may be reimbursed, in whole or in part.

10.10:

**Additional Responsibilities of the Board**

- (a) The Board shall reimburse all approved witness protection expenses incurred by prosecuting officers, subject to appropriation.
- (b) The Board shall issue guidelines relative to the payment of witness protection expenses, in addition to accounting and reporting requirements for prosecuting officers.
- (c) At regular intervals to be determined by the Board, the Board shall require the prosecuting officer to certify that:
  - (i) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
  - (ii) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.
- (d) All records of the Board, whether generated by the Board or received from a prosecuting officer, related to witness protection services shall be stored in a secure location established by the Secretary of Public Safety. This secure location shall be accessible only to the Secretary of Public Safety, his designee, and any other person whose access is determined by the Secretary of Public Safety to be essential to the successful operation of the witness protection program. Computer files and programs used by the Board containing information related to a critical witness will be protected by appropriate security procedures. Each Board member and prosecuting officer shall develop similar security procedures for his or her office, to ensure the confidentiality of sensitive law enforcement information and the safety of critical witnesses. Each prosecuting officer shall be required to report his or her security procedures to the Board prior to receiving reimbursement for witness protection services. Any officer or employee of the Commonwealth or its political subdivisions who receives information related to witness protection services shall maintain the confidentiality of the information.
- (e) The Board shall develop and implement any other necessary policy, rule, or guideline necessary for the successful operation of the witness protection program.

10.11:

**Responsibilities of the Critical Witness**

(a) The critical witness must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:

- (i) provide complete and truthful information to law enforcement officials, and testify completely and truthfully in all appropriate proceedings;
- (ii) not commit any crime;
- (iii) take all precautions necessary to avoid making known his or her participation in the witness protection program, except as authorized by a prosecuting officer or the Board;
- (iv) cooperate with all requests by all officers and employees of the Commonwealth and its political subdivisions who are providing protection services at the direction of the prosecuting officer;
- (v) designate another person to act as an agent for the service of process;
- (vi) make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation, and child support, as well as any probation or parole conditions, obligations or responsibilities;
- (vii) undertake to comply with all court orders, legal obligations or civil judgments;
- (viii) report his or her activities to the prosecuting officer on a regular basis.

(b) Failure by the critical witness to comply with any of the terms of the memorandum of understanding may lead to termination of protection services.

(c) If a witness, after being offered witness protection services, declines those services, the prosecuting officer shall request that the critical witness document that decision on a form developed and issued by the Board. If the witness refuses to memorialize his or her refusal of protection services, the prosecuting officer shall document the refusal and inform the Board within three business days of learning of the witness's refusal that the witness has declined protection services.

10.12:

**Responsibilities of Prosecuting Officer**

(a) The prosecuting officer must, at a minimum, sign a memorandum of understanding in which he or she agrees to undertake the following responsibilities:

- (i) provide the witness with the names and telephone numbers of the prosecuting officer or law enforcement personnel to contact if the witness has questions or concerns related to the protection services or the witness's safety;
- (ii) certify that the protection services requested by the prosecuting officer and authorized by the Board will be provided to the witness; and

- (iii) establish procedures to be followed if, in the determination of the prosecuting officer, the witness has committed a breach of the agreement.
- (b) Subject to the requirements of Section 10.10 (c), the prosecuting officer must certify that:
  - (i) he or she has taken reasonable and appropriate steps to monitor the conduct of the critical witness;
  - (ii) to the best of his or her knowledge and belief, the critical witness is in compliance with the terms of the memorandum of understanding, or that any breach of the memorandum of understanding has been or is now being reported to the Board.

The Board shall develop certification forms to accompany reimbursement requests by prosecuting officers.

10.13:

**Disclosure of Witness Protection Information in a Criminal Case**

With respect to any request by a defendant for information on protection services provided to a witness, the prosecuting officer shall seek appropriate court orders to ensure that the information concerning the witness remains as confidential as possible and is disseminated to as few persons as possible. With an appropriate court order, a defendant may obtain the witness's signed memorandum of understanding, a statement detailing the witness protection services provided, and the approximate cost of providing those services. This statement shall not contain any information which could lead any person to determine where the witness resided while receiving protection services. The Board shall develop model disclosure forms to accompany discovery produced to a defendant by a prosecuting officer.

10.14:

**All Other Disclosures Related to Witness Protection**

- (a) Notwithstanding any general or special law or regulation to the contrary, no document, record, or petition, in whatever form, generated by the Board or by a prosecuting officer and related to witness protection services shall be a public record.
- (b) So long as witness protection services are being provided to a critical witness, the prosecuting officer shall disclose the identity and location of a protected critical witness upon the request of a federal, state, or local law enforcement official, or pursuant to a court order, if the prosecuting officer knows, or the request from the law enforcement official reveals, that the protected witness is under criminal investigation for, or charged with, a felony.
- (c) In all other instances where information related to witness protection services is requested, no information or document shall be disclosed without the approval of three or more members of the Board or a valid court order.

10.15:

**Liaisons**

(a) The Board shall establish a liaison with the United States Marshal's Office in order to facilitate the legal processes over which the federal government has sole authority.

(b) The Board shall establish a liaison with the United States Department of Justice in order to pursue all federal sources of funding that may be available for implementing this program.

(c) In conjunction with the Executive Office of Administration and Finance and the Senate and House Committees on Ways and Means, the Board shall establish procedures to maximize federal funds for witness protection services.

10.16:

**Waiver**

The Board may, by a vote of three (3) or more members, waive any provision of these regulations not required by statute.

10.17:

**Immunity**

Nothing in these regulations shall be construed as creating a right, entitlement, or cause of action on behalf of any person against any public employee, public agency, the commonwealth, or any agency responsible for the provision of services set forth herein. The Commonwealth, its officers and employees, and law enforcement personnel shall have immunity from suit based on any decision, act, or omission related to these regulations.

10.18:

**Severability**

If any article, section, subsection, clause, or phrase of 501 CMR 10.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Secretary of Public Safety or the Witness Protection Board, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 501 CMR 10.00.

**REGULATORY AUTHORITY**

501 CMR 10.00; St. 2006, c. 48.